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*Attorneys for Defendant Flo Health, Inc.*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

ERICA FRASCO, et al.,

**Plaintiffs,**

V.

FLO HEALTH, INC., GOOGLE, LLC,  
FACEBOOK, INC., and FLURRY, INC..

### Defendants.

CASE NO. 3:21-cv-00757-JD (consolidated)

**DECLARATION OF BENJAMIN M.  
SADUN IN SUPPORT OF FLO HEALTH,  
INC.'S MOTION FOR SUMMARY  
JUDGMENT**

1 I, Benjamin M. Sadun, pursuant to 28 U.S.C. § 1746, declare as follows:

2 1. I am an attorney licensed to practice in the State of California, and a member of the  
3 Bar of this Court. I am a partner at the law firm Dechert LLP, counsel of record for Defendant Flo  
4 Health, Inc. (“Flo”) in the above-captioned case. I make this declaration in support of Flo Health,  
5 Inc.’s Motion for Summary Judgment. I have personal knowledge of the facts stated below and, if  
6 called as a witness, I could and would testify competently thereto:

7 2. Attached hereto as **Exhibit 1** is a true and correct copy of the transcript of the hearing  
8 before this Court on Defendants’ Motions to Dismiss on dated May 5, 2022.

9 3. Attached hereto as **Exhibit 2** is a true and correct copy of the case, *Javier v.*  
10 *Assurance IQ, LLC*, 649 F. Supp. 3d 891 (N.D. Cal. 2023).

11 4. Attached hereto as **Exhibit 3** is a true and correct copy of the May 3, 2024 Expert  
12 Report of Chris D. Karkanias.

13 5. Attached hereto as **Exhibit 4** is a true and correct copy of the Federal Trade  
14 Commission Agreement Containing Consent Order with Flo Health from *In re Flo, Health, Inc.*, FTC  
15 File No. 1923133, entered July 17, 2021.

16 6. Attached hereto as **Exhibit 5** is a true and correct copy of the June 28, 2024 Rebuttal  
17 Report of Chris D. Karkanias.

18 7. Attached hereto as **Exhibit 6** is a true and correct copy of the June 28, 2024 Rebuttal  
19 Report of Georgios Zervas.

20 8. Attached hereto as **Exhibit 7** is a true and correct copy of page 1 of an 18-page  
21 document showing screenshots of what users saw when they first opened the Flo App, previously  
22 produced as FLO-00104754.

23 9. Attached hereto as **Exhibit 8** is a true and correct copy of a screenshot showing what  
24 users saw when they first opened the Flo App, previously produced as FLO-00066600.

25 10. Attached hereto as **Exhibit 9** is a true and correct copy of a screenshot showing what  
26 users saw when they first opened the Flo App, previously produced as FLO-00000211.

27 11. Attached hereto as **Exhibit 10** is a true and correct copy of a screenshot showing what  
28 users saw when they first opened the Flo App, previously produced as FLO-00000212.

1       12. Attached hereto as **Exhibit 11** is a true and correct copy of the transcript of the  
2 January 20, 2023 deposition of Plaintiff Jennifer Chen.

3       13. Attached hereto as **Exhibit 12** is a true and correct copy of the transcript of the  
4 January 23, 2023 deposition of Plaintiff Erica Frasco.

5       14. Attached hereto as **Exhibit 13** is a true and correct copy of the transcript of the  
6 December 8, 2022 deposition of Plaintiff Tesha Gamino.

7       15. Attached hereto as **Exhibit 14** is a true and correct copy of the transcript of the  
8 January 6, 2023 deposition of Plaintiff Autumn Meigs.

9       16. Attached hereto as **Exhibit 15** is a true and correct copy of the transcript of the  
10 January 5, 2023 deposition of Plaintiff Autumn Meigs.

11       17. Attached hereto as **Exhibit 16** is a true and correct copy of the transcript of the  
12 January 27, 2023 deposition of Plaintiff Justine Pietrzyk.

13       18. Attached hereto as **Exhibit 17** is a true and correct copy of the transcript of the  
14 January 13, 2023 deposition of Plaintiff Leah Ridgway.

15       19. Attached hereto as **Exhibit 18** is a true and correct copy of the transcript of the  
16 January 11, 2023 deposition of Plaintiff Sarah Wellman.

17       20. Attached hereto as **Exhibit 19** is a true and correct copy of the transcript of the  
18 January 17, 2023 deposition of Plaintiff Madeline Kiss.

19       21. Attached hereto as **Exhibit 20** is a true and correct copy of the Flo App Privacy  
20 Policy, dated June 15, 2016 and in effect through March 14, 2017, previously produced as FLO-  
21 00003020-023.

22       22. Attached hereto as **Exhibit 21** is a true and correct copy of the Flo App Privacy  
23 Policy, dated March 14, 2017 and in effect through March 17, 2017, previously produced as FLO-  
24 00002942-947.

25       23. Attached hereto as **Exhibit 22** is a true and correct copy of the Flo App Privacy  
26 Policy, dated March 17, 2017 and in effect through July 12, 2017, previously produced as FLO-  
27 00002948-953.

1       24. Attached hereto as **Exhibit 23** is a true and correct copy of the Flo App Privacy  
2 Policy, dated July 12, 2017 and in effect through August 28, 2017, previously produced as FLO-  
3 00002779-785.

4       25. Attached hereto as **Exhibit 24** is a true and correct copy of the Flo App Privacy  
5 Policy, dated August 28, 2017 and in effect through November 13, 2017, previously produced as  
6 FLO-00003039-045.

7       26. Attached hereto as **Exhibit 25** is a true and correct copy of the Flo App Privacy  
8 Policy, dated November 13, 2017 and in effect through May 25, 2018, previously produced as FLO-  
9 00002969-975.

10      27. Attached hereto as **Exhibit 26** is a true and correct copy of the Flo App Privacy  
11 Policy, dated May 25, 2018 and in effect through July 16, 2018, and previously produced as FLO-  
12 00002803-815.

13      28. Attached hereto as **Exhibit 27** is a true and correct copy of the Privacy Policy between  
14 Flo Health and the users of the Flo App, dated July 16, 2018 and in effect through August 6, 2018,  
15 previously produced as FLO-00003007-019.

16      29. Attached hereto as **Exhibit 28** is a true and correct copy of the Privacy Policy between  
17 Flo Health and the users of the Flo App, dated August 6, 2018 and in effect through February 19,  
18 2019, previously produced as FLO-00002877-890.

19      30. Attached hereto as **Exhibit 29** is a true and correct copy of the Privacy Policy between  
20 Flo Health and the users of the Flo App, dated February 19, 2019 and in effect through February 23,  
21 2019, previously produced as FLO-00003024-038.

22      31. Attached hereto as **Exhibit 30** is a true and correct copy of the Privacy Policy between  
23 Flo Health and the users of the Flo App, dated February 23, 2019 and in effect through February 27,  
24 2019, previously produced as FLO-00002976-988.

25      32. Attached hereto as **Exhibit 31** is a true and correct copy of the Flo App Privacy  
26 Policy, dated February 27, 2019 and in effect through March 19, 2019, previously produced as FLO-  
27 00002749-761.

1       33. Attached hereto as **Exhibit 32** is a true and correct copy of the Terms of Service  
2 between Flo and users of the Flo App published March 13, 2017 and in effect through July 11, 2017,  
3 previously produced as FLO-00104570-573.

4       34. Attached hereto as **Exhibit 33** is a true and correct copy of the Terms of Service  
5 between Flo and users of the Flo App published July 11, 2017 and in effect through November 15,  
6 2017, previously produced as FLO-00104564-569.

7       35. Attached hereto as **Exhibit 34** is a true and correct copy of the Terms of Service  
8 between Flo and users of the Flo App published November 15, 2017 and in effect through November  
9 27, 2017, previously produced as FLO-00104580-585.

10      36. Attached hereto as **Exhibit 35** is a true and correct copy of the Terms of Service  
11 between Flo and users of the Flo App published November 27, 2017 and in effect through May 25,  
12 2018, previously produced as FLO-00104524-529.

13      37. Attached hereto as **Exhibit 36** is a true and correct copy of the Terms of Service  
14 between Flo and users of the Flo App, dated May 25, 2018, previously produced as FLO-00104551-  
15 556.

16      38. Attached hereto as **Exhibit 38** is a true and correct copy of the Terms of Service  
17 between Flo and users of the Flo App, dated June 22, 2018, previously produced as FLO-00003309 -  
18 FLO-00003315.

19      39. Attached hereto as **Exhibit 40** is a true and correct copy of the Terms of Service  
20 between Flo and users of the Flo App, published October 10, 2018, previously produced as FLO-  
21 00104557-563.

22      40. Attached hereto as **Exhibit 41** is a true and correct copy of the Terms of Service  
23 between Flo and users of the Flo App, published November 16, 2018, previously produced as FLO-  
24 00104530-536.

25      41. Attached hereto as **Exhibit 42** is a true and correct copy of the Terms of Service  
26 between Flo and users of the Flo App, published November 19, 2018, previously produced as FLO-  
27 00104537-543.

1       42. Attached hereto as **Exhibit 43** is a true and correct copy of the Terms of Service  
2 between Flo and users of the Flo App, published December 26, 2018 and in effect through February  
3 5, 2018, previously produced as FLO-00104544-550.

4       43. Attached hereto as **Exhibit 44** is a true and correct copy of the Terms of Service  
5 between Flo and users of the Flo App, dated February 5, 2020, previously produced as FLO-  
6 00002584-597.

7       44. Attached hereto as **Exhibit 45** is a true and correct copy of Flurry LLC's Amended  
8 and Supplemental Objections and Responses to Plaintiffs' Interrogatory Nos. 4, 5, 7, 8, 9, 10.

9       45. Attached hereto as **Exhibit 46** is a true and correct copy of Google LLC's Fourth  
10 Supplemental Responses to Plaintiffs' Interrogatories, Set One.

11       46. Attached hereto as **Exhibit 47** is a true and correct copy of Meta Platforms, Inc.'s  
12 Supplemental Responses and Objections to Plaintiffs' First Set of Interrogatories.

13       47. Attached hereto as **Exhibit 48** is a true and correct copy of the transcript of the  
14 February 9, 2023 deposition of Bisera Ferrero, Flurry's Rule 30(b)(6) witness.

15       48. Attached hereto as **Exhibit 49** is a true and correct copy of the transcript of the  
16 January 30, 2023 deposition of Steve Ganem, Google's Rule 30(b)(6) witness.

17       49. Attached hereto as **Exhibit 50** is a true and correct copy of the transcript of the  
18 February 9, 2023 deposition of Tobias Woolridge, Meta's Rule 30(b)(6) witness.

19       50. Attached hereto as **Exhibit 51** is a true and correct copy of Meta Platforms, Inc.'s  
20 Responses and Objections to Plaintiffs' Second Set of Interrogatories.

21       51. Attached hereto as **Exhibit 52** is a true and correct copy of Flurry LLC's Responses  
22 and Objections to Plaintiffs' Requests for Admission, Set One.

23       52. Attached hereto as **Exhibit 53** is an index of the Custom App Event titles and the in-  
24 app action to which they correspond, produced as FLO-00001891-899. This document was created by  
25 Flo at the request of the Federal Trade Commission. It did not exist during the proposed class period  
26 and has never been shared with Meta, Google, or Flurry except during discovery in this litigation.

27       53. Attached hereto as **Exhibit 54** is a true and correct copy of an article titled "You Give  
28 Apps Sensitive Personal Information. Then They Tell Facebook." authored by Sam Schechner and

1 Mark Secada, published by the *Wall Street Journal*, dated February 22, 2019, previously produced as  
 2 FLO-00072682-92 and cited at length in Plaintiffs' Complaint. *E.g.*, Compl. ¶¶ 21, 269.

3 54. Attached hereto as **Exhibit 55** is an index of news articles, ranging in date from  
 4 February 22, 2019 to September 14, 2019, repeating the *Wall Street Journal's* allegations about Flo's  
 5 alleged health data sharing.

6 55. Attached hereto as **Exhibit 56** is a true and correct copy of an article titled "Facebook  
 7 reportedly gets deeply personal info, such as ovulation times and heart rate, from some apps,"  
 8 authored by Lauren Feiner, published by CNBC, dated February 22, 2019, available at  
 9 <http://www.cnbc.com/2019/02/22/facebook-receives-personal-health-data-from-apps-wsj.html>.

10 56. Attached hereto as **Exhibit 57** is a true and correct copy of an article titled "Apps  
 11 quietly sharing users' data: Information, such as timing of menstrual cycles, is being sent to Facebook  
 12 without consent, a report says," published in the *Los Angeles Times*, dated February 23, 2019,  
 13 available at [https://enewspaper.latimes.com/infinity/article\\_share.aspx?guid=353d6736-a8fd-461b-9931-10d73ab43fee](https://enewspaper.latimes.com/infinity/article_share.aspx?guid=353d6736-a8fd-461b-9931-10d73ab43fee).

15 57. Attached hereto as **Exhibit 58** is a true and correct copy of an article titled "Some  
 16 Apps Stop Sharing Sensitive User Data with Facebook after Practice Exposed Heart Rates, Menstrual  
 17 Cycles, Weight, among Private Information Divulged," authored by Levi Sumagaysay, published in  
 18 the *San Jose Mercury News*, dated February 25, 2019, available at  
 19 <https://www.mercurynews.com/2019/02/25/some-apps-stop-sharing-sensitive-user-data-with-facebook-after-practice-exposed/>.

21 58. Attached hereto as **Exhibit 59** is a true and correct copy of screenshots of a  
 22 representative sampling of public tweets posted by users on Twitter regarding the Flo App. These  
 23 results were discovered by conducting the following time-bounded keyword searches using Twitter's  
 24 public search tool in January of 2025:

- 25 a. "Facebook" "Flo Health" until:2019-12-19 since: 2019-02-01;
- 26 b. Facebook Flo "Wall street journal" until:2019-12-19 since:2019-02-01;
- 27 c. Facebook Flo "WSJ" until:2019-12-19 since:2019-02-01;
- 28 d. "flo" "app" "wall" until:2019-12-19 since:2019-02-01;

1 e. “WSJ” “Flo” “app” until:2019-12-19 since:2019-02-01.

2 59. Attached hereto as **Exhibit 60** are true and correct copies of screenshots of public iOS  
3 App Store reviews of the Flo App created between February 2019 and December 2019 that mention  
4 the word “Facebook,” obtained by using the App Store’s publicly available search API.

5 60. Attached hereto as **Exhibit 61** are true and correct copies of screenshots of public user  
6 reviews posted to the Android App Store from February 2019 through December 2019, obtained by  
7 using the App Store’s publicly available search API.

8 61. Attached hereto as **Exhibit 62** is a true and correct copy of an email sent to Flo  
9 customer support on February 22, 2019, previously produced as FLO-00025695.

10 62. Attached hereto as **Exhibit 63** is a true and correct copy of an email sent to Flo  
11 customer support on February 24, 2019, previously produced as FLO-00025710.

12 63. Attached hereto as **Exhibit 64** is a true and correct copy of an email sent to Flo  
13 customer support on February 26, 2019, previously produced as FLO-00025907.

14 64. Attached hereto as **Exhibit 65** is a true and correct copy of an email sent to Flo  
15 customer support on April 20, 2019, previously produced as FLO-00025920.

16 65. Attached hereto as **Exhibit 66** is a true and correct copy of an email sent to Flo  
17 customer support on May 1, 2019, previously produced as FLO-00025926.

18 66. Attached hereto as **Exhibit 67** is a true and correct copy of the transcript of the  
19 February 28, 2023 deposition of Roman Bugaev, an employee of Flo.

20 67. Attached hereto as **Exhibit 68** is a true and correct copy of the May 3, 2024 Expert  
21 Report of Serge Egelman.

22 68. Attached hereto as **Exhibit 69** is a true and correct copy of materials relied upon by  
23 Professor Lorin Hitt in his Expert Report, previously produced as FLO-HITT-00106857.

24 69. Attached hereto as **Exhibit 70** is a true and correct copy of the July 12, 2024 Expert  
25 Report of Lorin Hitt.

26 70. Attached hereto as **Exhibit 71** is a true and correct copy of the Wikipedia page for  
27 “Flo (app)” showing the version dated February 23, 2019, as downloaded on February 6, 2025,  
28 available at [https://en.wikipedia.org/w/index.php?title=Flo\\_\(app\)&oldid=884727975](https://en.wikipedia.org/w/index.php?title=Flo_(app)&oldid=884727975).

71. Attached hereto as **Exhibit 72** is a true and correct copy of the Wikipedia page for “Flo (app)” showing the version dated February 26, 2019, as downloaded on February 6, 2025, available at [https://en.wikipedia.org/w/index.php?title=Flo\\_\(app\)&oldid=885204977](https://en.wikipedia.org/w/index.php?title=Flo_(app)&oldid=885204977).

72. Attached hereto as **Exhibit 73** is a true and correct version of the current Wikipedia page for “Flo (app),” as downloaded on February 6, 2025, available at [https://en.wikipedia.org/wiki/Flo\\_\(app\)](https://en.wikipedia.org/wiki/Flo_(app)).

73. The emails attached as Exhibits 62-66 are representative examples of over 250 complaints and inquiries Flo received from users in the aftermath of the February 22, 2019 *Wall Street Journal* article cited in Plaintiffs' Complaint.

74. The screenshots contained in Exhibits 7-10 are representative of what users would have seen when opening the Flo App for the first time throughout the class period.

75. The Twitter posts reflected in Exhibit 59 are representative of posts containing allegations that the Flo App shared information from February 2019 to December 2019.

76. The App Store reviews attached as Exhibits 60-61 are representative of reviews about the Flo App from February 2019 to December 2019.

77. The articles attached as Exhibits 55-58 are representative of the hundreds of articles repeating allegations about the Flo App first made in the *Wall Street Journal* from February 22, 2019 onwards, including the articles listed in Exhibit 55.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 6th day of February, 2025 in Los Angeles, California.

RESPECTFULLY SUBMITTED,

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